



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FAM Construction, LLC
FOR
Transform 66 Project
VPDES Permit VAR10, Registration No. VAR10K601**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and FAM Construction, LLC, regarding the Transform 66 project, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 State Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which was scheduled to expire on June 30, 2019.
2. "2019 State Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
10. "I-66" means Interstate Highway 66.
11. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
12. "FAM" means FAM Construction, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. FAM is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
15. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
17. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are 'pollution.'" Va. Code § 62.1-44.3.
18. "Registration Statement" means a registration statement for coverage under the State Permit.
19. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
20. "Site" or "Project" or "Transform 66" means the *Transform 66 P3 Project General Construction Activities* construction project located along I-66 from US Route 29 in Gainesville to Interstate 495, in Prince William County, Fairfax County and Fairfax City, Virginia, from which discharges of stormwater associated with construction activity occur.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
22. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
23. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.

24. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
25. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
26. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.
29. "VDOT" means the Virginia Department of Transportation.
30. "VESC Regulations" means the Virginia Erosion and Sediment Control (VESC) Regulations, 9 VAC 25-840-10 et seq.
31. "VPDES" means Virginia Pollutant Discharge Elimination System.
32. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
33. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

34. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. FAM is the construction activity operator for the Project located along I-66 in Prince William County, Fairfax County, and Fairfax City, Virginia.
2. Land disturbing activities at the Site are conducted under VDOT’s standards and specifications in accordance with Va. Code § 62.1-44.15.31(A).
3. DEQ is the VSMP authority for the Project.
4. FAM applied for and, on December 17, 2017, was granted coverage under the 2014 State Permit. FAM was assigned registration number VAR10K601.
 - a. FAM submitted a Registration Statement to DEQ on May 15, 2019, requesting continued coverage under the 2019 State Permit.
 - b. On August 7, 2019, DEQ approved FAM’s Registration Statement for continued coverage under the 2019 State Permit.
5. The 2019 State Permit allows FAM to discharge stormwater associated with construction activities from the Site to the 24 receiving streams specifically listed in FAM’s State Permit Registration, in strict compliance with the terms and conditions of the 2019 State Permit.
6. The 24 receiving streams that receive stormwater discharges from the Site are surface waters located wholly within the Commonwealth and are each a “state water” under the State Water Control Law.
7. DEQ staff conducted Site inspections on February 11, April 17, April 27, and May 4, 2020, and issued an inspection report to FAM for each inspection on February 26, April 22, April 29, and May 8, 2020, respectively.
8. During the DEQ Site inspections conducted on April 17 and May 4, 2020, staff observed that functional sediment trapping measures were not in place prior to initiating upslope land disturbance as follows:
 - a. During the April 17, 2020, inspection, DEQ staff observed that sediment basin SB-01 was not installed as listed in approved erosion and sediment control plans for the Site, and upslope land disturbance in the area had occurred.

- b. During the May 4, 2020, inspection, DEQ staff observed that sediment basin SB-6 was not installed as listed in approved erosion and sediment control plans for the Site, and upslope land disturbance in the area had occurred.
 9. 9 VAC 25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."
 10. During the DEQ Site inspections conducted on February 11, and April 17, 2020, land disturbing activities conducted were observed to be inconsistent with the Site's approved plan for erosion and sediment control and stormwater management.
 - a. During the February 11, 2020, inspection, DEQ staff observed a location of land disturbance associated with the Site (near Walney Road), which exceeded the approved limits of disturbance and did not have approved plans prior to initiating the land clearing.
 - b. During the April 27, 2020, inspection, DEQ staff observed that a sediment trap had been installed instead of sediment basin SB-01, as listed in the Site's approved erosion and sediment control plans.
 11. 9 VAC 25-870-54(B) requires that an approved erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law, be designed and implemented during construction activities.
 12. During the Site inspections conducted on April 17, April 27, and May 4, 2020, separate, discrete discharges of measureable sediment to surface waters were documented by DEQ staff.
 13. 9 VAC 25-870-310(A) states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."
- 9 VAC 25-31-50 states, "Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to...[d]ischarge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities."
- Va. Code § 62.1-44.5(A) states: "Except in compliance with a certificate or permit issued by the Board or other Entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to ... [d]ischarge stormwater into state waters from Municipal Separate Storm Sewer System or land disturbing activities."

Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.

14. Based on the results of DEQ’s Site inspections and file review as summarized above in Sections C(1) through C(13), a Notice of Violation (NOV No. SW2020-05-NRO-001) was issued to FAM on May 8, 2020.
15. On June 2, 2020, DEQ received a written response to the NOV, and on June 5, 2020, DEQ staff had a virtual meeting with representatives of FAM to discuss the NOV, FAM’s NOV response, its progress and further plans for corrective actions, and DEQ enforcement proceedings.
16. On June 17, 2020, DEQ requested FAM to submit a documentation package to DEQ by July 7, 2020.
17. On July 3, 2020, FAM submitted the requested documentation package to DEQ. FAM sent additional correspondence to DEQ on July 10, 2020.
18. Based on the results of the inspections performed on February 11, April 17, April 27, and May 4, 2020, DEQ’s corresponding file review(s), the NOV response submitted to DEQ, the meeting between DEQ and representatives of FAM on June 5, 2020, the documentation package submitted to DEQ on July 3, 2020, and related correspondence and between DEQ and representatives of FAM, the Board concludes that FAM violated Va. Code § 62.1-44.5(A), Va. Code §62.1-44.15:34, 9 VAC 25-31-50, 9 VAC 25-840-40(4), 9 VAC 25-870-54(B), and 9 VAC 25-870-310(A) as described above.
19. DEQ conducted follow-up inspections of the Site on June 12, June 30, 2020, and confirmed that corrective actions had been completed by FAM. The corresponding inspection reports issued by DEQ, did not request any further corrective actions related to the noncompliance cited in the NOV.
20. On August 14, 2020, DEQ replied to FAM regarding the documentation package submitted on July 3, 2020. DEQ’s stated that the information submitted by FAM, and observations of DEQ staff during the June 12 and June 30, 2020, inspections, adequately demonstrated FAM’s return to compliance at the Site, and that no further corrective actions were required at that time.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FAM, and FAM agrees to pay a civil charge of **\$24,375** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FAM shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FAM shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FAM for good cause shown by FAM, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. SW2020-05-NRO-001 dated May 8, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, FAM admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FAM consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FAM declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by FAM to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FAM shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FAM shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FAM shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FAM. Nevertheless, FAM agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after FAM has completed all of the requirements of the Order;
 - b. FAM petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FAM.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FAM from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FAM and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of FAM certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind FAM to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FAM.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, FAM voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of May, 2021.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Consent Order

FAM Construction, LLC; VPDES Permit No. VAR10, Registration No. VAR10K601

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FAM Construction, LLC voluntarily agrees to the issuance of this Order.

Date: 1/27/2021 By: [Signature], CEO
(Person) (Title)
FAM Construction, LLC

Commonwealth of Virginia

City/County of Fairfax

The foregoing document was signed and acknowledged before me this 27 day of

January, 2021, by Pablo Molla who is
CEO of FAM Construction, LLC, on behalf of the company.

[Signature]
Notary Public

7870314
Registration No.

My commission expires: May 31, 2024

Notary seal:

